



## **United States Mission to the OSCE**

# **Statement on Rule of Law: Legislative Transparency, Independence of Judiciary and Fair Trial**

As delivered by Ambassador Larry Napper, Head of Delegation  
to the Human Dimension Implementation Meeting, Warsaw  
October 7, 2004

OSCE commitments to ensure legislative transparency, the independence of the judiciary and the right to a fair trial are enshrined in the Copenhagen and Moscow documents.

Participating States have agreed to these commitments because they recognize that the separation of powers is fundamental to democratic government. Without the countervailing influence of an independent legislature and courts, the executive branch tends to arrogate to itself the exclusive right to make policy. This is why an independent judiciary and a transparent and empowered legislature are crucial to democracy and human rights. Indeed, despite the Copenhagen and Moscow commitments, rule by Presidential decree remains the most common form of administration in some participating States.

Cutting the legislature out of the policy process effectively disenfranchises citizens. Leaving courts dependent on the executive branch subjects citizens to the arbitrary will of individual leaders. Unfortunately, progress toward separation of powers has been slow in some OSCE participating States. The consequences of this delay for citizens' rights can be tragic. Without the separation of powers and judicial independence, fair trials, for example, especially in politically sensitive cases, remain largely an unattained ideal. The continued subordination of the courts to the will of the authorities undermines the rule of law and the public's confidence in the impartial administration of justice and the possibility for effective redress of grievances. This weakens the prospects of protecting human rights and establishing a democratic government, which in turn jeopardizes fulfillment of key OSCE commitments.

For example, even though high-ranking Ukrainian officials have been implicated in the murder of prominent investigative journalist Heorhiy Gongadze, the case remains unsolved more than four years after his disappearance.

Regarding Belarus, Council of Europe Special Rapporteur Pourgourides issued a report indicating credible evidence suggests involvement in disappearances and subsequent cover-up by important Belarusian officials, including involvement at the highest levels of the state. A serious investigation into the high-profile disappearances of three leading opposition members and a journalist in 1999 and 2000 has yet to be undertaken.

We would like to see immediate and credible investigations into these and other cases where justice has been thwarted. The perpetrators and those involved in covering-up the crimes, regardless of who they are, must be held accountable.

In Kyrgyzstan, officials recently announced that opposition party leader Felix Kulov, whom many human rights organizations consider a political prisoner, will not be eligible for parole

until November 2005 – after the scheduled presidential election. His conviction and sentencing were widely viewed as politically motivated; we are concerned that similar dynamics are apparently influencing the timetable of his release. An independent and rigorous judicial review of his conviction would be a welcome step in establishing the integrity of these decisions.

There are some important legal cases yet to be resolved in Azerbaijan, including those of seven opposition leaders currently on trial for allegedly organizing last year's post-election violence. Human Rights Watch has reported cases in which police used beatings and torture to extract confessions and to pressure detainees to sign false statements denouncing the opposition and implicating opposition leaders in the post-election violence. As OSCE participating States, we all share a commitment to due process and an independent judiciary, and it is important that these cases be investigated and that the trial be conducted in a manner consistent with these principles.

Unfair trials are also exacerbating the ongoing tension between the Government of Uzbekistan and Islamic radicals. It is essential that, in every instance, the judicial system accord all appropriate rights to defendants, as called for in Copenhagen commitments.

The Russian Federation has made some notable strides in establishing the formal rule of law. On paper at least, there have been significant reforms designed to bring the Russian legal system into conformity with internationally accepted norms and practices.

But all these reforms are ineffective if the Government does not apply them consistently and conscientiously. One case in the past year has garnered particular international attention. While we do not take a position on the specific merits of the case against Mikhail Khodorkovskiy, former head of Yukos Oil Company, it raised serious questions about the Russian Federation's respect for rule of law and due process without influence from political considerations.

Finally, the U.S. remains very concerned over the fate of those convicted for alleged participation in an attempted coup of November 2002 in Turkmenistan. The televised trials of those charged were reminiscent of Stalin-era show-trials, with the accused denied due process and confessing to all possible charges. Since then, nobody, including family or legal counsel, has been granted access to these prisoners. It is unknown whether they are still alive. The Government continues to refuse permission to the International Committee of the Red Cross or other international observers to visit prisons in Turkmenistan. The government has stated that, were it to grant access, prisoners associated with coup attempts would be off-limits. It is essential that the Red Cross be granted access to Turkmenistan's prisons and be permitted also to see prisoners accused of participating in the coup attempt.

Without transparency in the legislative process, a truly independent judiciary, and the guaranteed right to a fair trial for every person, there can be no rule of law. And without the rule of law, there can be no lasting security. This is why the United States calls upon all OSCE participating States to honor their commitments under the Copenhagen and Moscow documents and to formally review their implementation of these commitments on a regular basis.

Thank you.